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EXTRAORDINARY

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PART II—Section 1

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 2nd August, 1976/Sravana 11, 1898 (Saka)

THE METAL CORPORATION (NATIONALISATION AND
MISCELLANEOUS PROVISIONS) ORDINANCE, 1976

No. 12 of 1976

Promulgated by the President in the Twenty-seventh Year of the
Republic of India.

An ordinance to provide for the taking over of the management of the undertaking of the Metal Corporation, after such undertaking is deemed to have been retransferred to, and re-vested in, the said Corporation, and for the subsequent acquisition of the undertaking of the Metal Corporation for the purpose of enabling the Central Government, in the public interest, to exploit, to the fullest extent possible, the zinc and lead deposits in and around Zawar area in the State of Rajasthan and to utilise those minerals in such manner as to subserve the common good, and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I PRELIMINARY

1. (1) This Ordinance may be called the Metal Corporation (Nationalisation and Miscellaneous Provisions) Ordinance, 1976.

(2) Sections 20 and 21 shall come into force at once and the other provisions of this Ordinance shall be deemed to have come into force on the 22nd day of October, 1965.

Short
title
and com-
mence-
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Defini-
tions.

2. In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the date on which this Ordinance is first published in the Official Gazette;

(b) "commencement of this Ordinance" means the 22nd day of October, 1965;

(c) "Metal Corporation" means the Metal Corporation of India Limited, a company within the meaning of the Companies Act, 1956, 1 of 1956. and having its registered office at Calcutta;

(d) "Mineral Concession Rules" means the Mineral Concession Rules, for the time being in force, made by the Central Government under the Mines and Minerals (Regulation and Development) Act, 1957; 67 of 1957.

(e) "notification" means a notification published in the Official Gazette;

(f) "prescribed" means prescribed by rules made under this Ordinance;

(g) words and expressions used in this Ordinance and not defined but defined in the Companies Act, 1956, have the meanings respectively assigned to them in that Act. 1 of 1956.

"Under-
taking"
—mean-
ing of.

3. For the purposes of this Ordinance, the undertaking of the Metal Corporation shall be deemed to include all assets, rights, leaseholds (including mining leases, if any), powers, authorities and privileges and all property, movable and immovable, including lands, buildings, works, mines, workshops, projects, smelters, refineries, stores, instruments, machinery, locomotives, automobiles and other vehicles, mined or extracted zinc or lead ores, concentrates and metals, in process or in stock or in transit, cash balances, cash in hand, reserve fund, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the date of commencement of this Ordinance in the ownership, possession, power or control of the Metal Corporation, whether within or without India, and all books of account, registers, maps, sections drawings, records of survey and all other documents of whatever nature relating thereto; and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind of the Metal Corporation in relation to its undertaking.

CHAPTER II

TAKING OVER OF MANAGEMENT OF THE UNDERTAKING OF THE METAL CORPORATION

Taking
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tion,

4. (1) On the commencement of this Ordinance, the Metal Corporation of India (Acquisition of Undertaking) Act, 1966, shall stand repealed, and on such repeal the undertaking of the Metal Corporation, which had been transferred to, and vested in, the Central Government by virtue of the provisions of section 3 of the Act so repealed and the undertaking of the Metal Corporation together with all its properties, assets, liabilities and obligations specified in sub-section (1) of section 4 of that Act and such other properties, assets, liabilities and obligations, acquired or incurred for

36 of 1966.

the purposes of its undertaking after the 22nd day of October, 1965, which stood, by virtue of the provision of section 12 of the said Act, transferred to, and vested in, the Government company, formed in pursuance of the provisions of section 12 of the Act aforesaid, shall, by virtue of the provisions of this Ordinance, be deemed to have been re-transferred to, and re-vested in, the Metal Corporation and, immediately thereafter, the management of the undertaking of the Metal Corporation shall be deemed to have been transferred to, and vested in, the Central Government.

(2) Any contract, whether express or implied, or other arrangement, in so far as it relates to the management of the business and affairs of the undertaking of the Metal Corporation, and in force immediately before the commencement of this Ordinance, shall be deemed to have terminated on such commencement.

1 of 1956.

(3) All persons in charge of the management, including persons holding offices as directors, managers or in any other managerial capacity specified in section 197A of the Companies Act, 1956, of the Metal Corporation immediately before the commencement of this Ordinance, shall be deemed to have vacated their offices as such on such commencement.

(4) Notwithstanding anything contained in any other law for the time being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions of sub-section (2) or who ceases to hold office by reason of the provisions contained in sub-section (3), shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the loss of office, as the case may be.

5. (1) The Central Government may, as soon as it is convenient administratively so to do, appoint, with effect from such earlier or later date (not being a date earlier than the commencement of this Ordinance), any person or body of persons (including a Government company, whether in existence at the commencement of this Ordinance or incorporated thereafter) as the Administrator of the undertaking of the Metal Corporation and the Administrator so appointed shall carry on the management of such undertaking for and on behalf of the Central Government.

Appointment of Administrator to take over the management of the undertaking.

(2) On the appointment of the Administrator under sub-section (1), the management of the undertaking of the Metal Corporation shall vest in such Administrator and all persons in charge of the management of such undertaking immediately before such appointment shall cease to be in charge of such management and shall be bound to deliver to the Administrator all assets, books of account, registers and other documents in their custody relating to the undertaking of the Metal Corporation.

(3) The Central Government may issue such directions (including instructions as to initiating, defending or continuing any legal proceedings before any court, tribunal or other authority) to the Administrator as to his powers and duties as the Central Government may deem desirable and the Administrator may also apply to the Central Government at any time for instructions as to the manner in which the management of the undertaking of the Metal Corporation, or in relation to any other matter arising in the course of such management, shall be conducted.

(4) Where any property, the management of which has vested in the Central Government under section 4, ~~is in the possession,~~ custody or control of any person, such person shall deliver the property to the Central Government forthwith.

(5) Any person who, at the commencement of this Ordinance, has in his possession or under his control any books, papers or other documents relating to the undertaking of the Metal Corporation shall be liable to account for such books, papers and other documents to the Administrator and shall deliver them up to the Administrator or to such person as may be authorised by the Central Government or the Administrator in this behalf.

(6) The Metal Corporation shall, within such period as the Central Government may allow in this behalf, furnish to that Government a complete inventory of all the properties and assets (including particulars of book debts and investments and belongings) of the Metal Corporation at the commencement of this Ordinance, all liabilities and obligations of the Metal Corporation subsisting at such commencement and also of all agreements entered into by the Metal Corporation and in force on such commencement, including agreements, whether express or implied, relating to leave, pension, gratuity and other terms of service of any officer or other employee of the Metal Corporation under which, by virtue of the provisions of this Ordinance, the Central Government has, or will have, or may have, liabilities, and for this purpose, the Central Government shall afford the Metal Corporation all reasonable facilities.

(7) The Administrator shall hold office during the pleasure of the Central Government and shall receive, from the funds of the undertaking of the Metal Corporation such remuneration as may be fixed by the Central Government.

Applica-
tion of
Act
1 of 1956.

6. (1) Notwithstanding anything contained in the Companies Act, 1956, or in the memorandum or articles of association of the Metal Corporation, so long as the management of the undertaking of the Metal Corporation remains vested in the Central Government,—

(a) it shall not be lawful for the shareholders of the Metal Corporation or any other person to nominate or appoint any person to be a director of the Metal Corporation;

(b) no resolution passed at any meeting of the shareholders of the Metal Corporation on or after the commencement of this Ordinance shall be given effect to unless approved by the Central Government;

(c) no proceeding for the winding up of the Metal Corporation or for the appointment of liquidator or receiver in respect of the undertaking thereof shall lie in any court except with the consent of the Central Government.

(2) Subject to the provisions contained in sub-section (1), and to the other provisions contained in this Ordinance and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification, specify in this behalf, the Companies Act, 1956, shall continue to apply to the Metal Corporation in the same manner as it applied thereto before the date of commencement of this Ordinance.

1 of 1956.

CHAPTER III

ACQUISITION OF THE UNDERTAKING OF THE METAL CORPORATION

7. (1) On the appointed day, the undertaking of the Metal Corporation, and the right, title and interest of the Metal Corporation in relation to its undertaking, shall stand transferred to, and shall vest absolutely in, the Central Government.
- (2) Subject to the other provisions contained in this Ordinance, all property included in the undertaking of the Metal Corporation which has vested in the Central Government under sub-section (1) shall, by force of such vesting, be freed and discharged from any trusts, obligations, mortgages, charges, liens and other incumbrances affecting it, and any attachment, injunction or any decree or order of a court, tribunal or other authority restricting the use of such property in any manner shall be deemed to have been withdrawn.
- (3) Subject to the other provisions contained in this Ordinance, all contracts and working arrangements which are subsisting immediately before the appointed day and affecting the Metal Corporation shall, in so far as they relate to the undertaking of the Metal Corporation, cease to have effect or be enforceable against the Metal Corporation or any person who was surety or had guaranteed the performance thereof and shall be of as full force and effect against or in favour of the Central Government and enforceable as fully and effectually as if, instead of the Metal Corporation, the Central Government had been named therein or had been a party thereto.
- (4) Subject to the other provisions contained in this Ordinance, any proceeding or cause of action pending or existing immediately before the appointed day by or against the Metal Corporation or the Central Government or the Government company referred to in section 12, in relation to the undertaking of the Metal Corporation may, as from that day, be continued and enforced by or against the Central Government or the Government company as it might have been enforced by or against the Metal Corporation, the Central Government or the Government company, as the case may be, if this Ordinance had not been promulgated, and shall cease to be enforceable by or against the Metal Corporation, its surety or guarantor.
8. (1) Where the right of the Metal Corporation under any mining lease granted, or deemed to have been granted to it by any State Government or any other person, vest in the Central Government under section 7, the Central Government shall, on and from the date of such vesting, be deemed to have become the lessee of such State Government or such other person, as the case may be, in relation to such mine, as if a mining lease in respect of such mine had been granted to the Central Government, and the period of such lease shall be the entire period for which such lease could have been granted by the State Government or such other person under the Mineral Concession Rules, and, thereupon all the rights under such mining lease, including surface, underground and other rights granted to the lessee shall be deemed to have been transferred to, and vested in, the Central Government.
- (2) On the expiry of the term of any lease referred to in sub-section (1), such lease shall, if so desired by the Central Government, be renewed

Vesting
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by the State Government or other person on the same terms and conditions on which such lease was held immediately before the appointed day by the Metal Corporation, for the maximum period for which such lease could be renewed under the Mineral Concession Rules.

Power of Central Government to direct vesting of the undertaking of the Metal Corporation in a Government company.

9. (1) Notwithstanding anything contained in section 7, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by an order in writing, that the undertaking of the Metal Corporation and the right, title and interest of the Metal Corporation in relation to such undertaking shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of publication of the direction or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the direction.

(2) Where the right, title and interest of the Metal Corporation in relation to its undertaking vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the lessee in relation to the mines of which the Metal Corporation was the lessee as if a mining lease in respect of such mines had been granted to the Government company, and the period of such lease shall be the entire period for which such lease could have been granted under the Mineral Concession Rules; and all the rights and liabilities of the Central Government in relation to such mines shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

(3) The provisions of sub-section (2) of section 8 shall apply to a lease which vests in a Government company as they apply to a lease which has vested in the Central Government and any reference therein to the Central Government shall be construed as a reference to the Government company.

(4) Any reference hereafter in this Ordinance to the Government company shall be construed as a reference to the Government company in which the right, title and interest of the Metal Corporation in relation to its undertaking have vested in pursuance of a direction made under sub-section (1).

CHAPTER IV

PAYMENT OF AMOUNTS

Payment of amount for deprivation of management.

10. For the deprivation of the Metal Corporation of the management of its undertaking, there shall be given to the Metal Corporation by the Central Government, an amount, calculated at the rate of rupees eleven lakhs and thirty-nine thousand per annum, for the period commencing on the date of commencement of this Ordinance and ending on the appointed day.

11. For the transfer to, and vesting in, the Central Government, under section 7, of the right, title and interest of the Metal Corporation in relation to its undertaking, there shall be given by the Central Government to the Metal Corporation, in cash, an amount of rupees one crore and ninety-lakhs.

Payment of amount for acquisition of the undertaking.

12. (1) The amount determined under section 10 and the amount payable under section 11 shall be given by the Central Government to the Metal Corporation before the expiry of a period of three months from the appointed day (hereafter referred to as the specified period).

Time of payment.

(2) The amount referred to in sub-section (1) shall carry simple interest at the rate of four per cent. per annum, for the period commencing on the date of expiry of the specified period and ending on the date on which payment of such amount is made by the Central Government to the Metal Corporation:

Provided that no interest shall run from the date on which the amount is tendered to the Metal Corporation if the amount so tendered is not accepted by it.

CHAPTER V

MANAGEMENT, ETC., OF THE UNDERTAKING OF THE METAL CORPORATION

13. The general superintendence, direction, control and management of the affairs and business of the undertaking of the Metal Corporation, the right, title and interest in relation to which have vested in the Central Government under section 7, shall vest in the Government company specified in the direction made under sub-section (1) of section 9, and, thereupon the Government company shall be entitled to exercise all such powers and do all such things as the Metal Corporation is authorised to exercise and do in relation to its undertaking.

Management, etc., of the undertaking.

CHAPTER VI

PROVISIONS RELATING TO EMPLOYEES OF THE METAL CORPORATION

14. (1) Every officer or other employee of the Metal Corporation (except a director or any managerial personnel specified in section 197A of the Companies Act, 1956, or any other person entitled to manage the whole or a substantial part of the business of the Metal Corporation under a special agreement) in the employment of the Metal Corporation immediately before the commencement of this Ordinance shall, in so far as such employee is employed in connection with the affairs of the undertaking of the Metal Corporation, become, as from such commencement, an officer or other employee, as the case may be, of the Central Government or the Government company and shall hold office by the same tenure and at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held under the Metal Corporation if this Ordinance had not been promulgated and shall continue to do so until his employment under the Central Government or the Government company is duly terminated or until his remuneration, terms and conditions are duly altered by the Central Government or the Government company:

Provisions relating to employees.

Provided that if the alteration ~~so made is not acceptable~~ to any such officer or other employee, his employment shall be terminated by the Central Government or the Government company on payment of an amount equivalent to—

(a) three months' remuneration, in the case of permanent employees, and

(b) one month's remuneration, in the case of other employees:

Provided further that nothing in this section shall apply to any officer or other employee who has, within thirty days next following the date of commencement of this Ordinance, by notice in writing to the Central Government or the Government company, as the case may be, intimated his intention of not becoming an officer or other employee of the Central Government or the Government company.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Metal Corporation to the Central Government or the Government company shall not entitle such officer or other employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, tribunal or other authorities.

14 of 1947.

Provident
and
other
funds.

15. (1) Where the Metal Corporation has established a provident, superannuation, welfare or other fund for the benefit of the persons employed in its undertaking, the monies relatable to the officers or other employees whose services have become transferred by or under this Ordinance to the Central Government or the Government company, shall, out of the monies standing, on the appointed day, to the credit of such provident, superannuation, welfare or other fund, stand transferred to, and vested in, the Central Government or the Government company, as the case may be.

(2) The monies which stand transferred, under sub-section (1), to the Central Government or the Government company, as the case may be, shall be dealt with by that Government or Government company in such manner as may be prescribed.

CHAPTER VII

MISCELLANEOUS

Ordinance to
have
over-
riding
effect.

16. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Ordinance, or in any decree or order of any court, tribunal or other authority.

Contracts
in bad
faith
may be
cancelled
or
varied.

17. (1) If the Central Government is satisfied after such inquiry as it may think fit that any contract or agreement entered into at any time within three years immediately preceding the commencement of this Ordinance between the Metal Corporation or the managing agents of Metal Corporation and any other person, in so far as such contract or agreement relates to the undertaking of the Metal Corporation, has been entered into in bad faith or is detrimental to the interests of the undertaking of the Metal Corporation, it may make an order cancelling (either unconditio-

nally or subject to such conditions as it may think fit to impose) or varying the contract or agreement, and thereafter the contract or agreement shall have effect accordingly:

Provided that no such contract or agreement shall be cancelled or varied except after giving to the parties to the contract or agreement a reasonable opportunity of being heard.

(2) Any person aggrieved by an order made under sub-section (1) may make an application to the High Court at Calcutta for the variation or reversal of such order and thereupon such court may confirm, modify or reverse such order.

18. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of that Government or the Administrator or the Government company or any officer or other person authorised by that Government or Government company for anything which is in good faith done or intended to be done under this Ordinance.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government or any of its officers or other employees or the Government company or any officer or other person authorised by that company for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Ordinance.

19. (1) The Central Government may, by notification, direct that all or any of the powers exercisable by it under this Ordinance, other than the power conferred by section 22, may also be exercised by such person or persons, as may be specified in the notification.

Delegation of powers.

(2) Whenever any delegation of power is made under sub-section (1), the persons to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

20. Any person who,—

Penalties.

(a) having in his possession, custody or control any property forming part of any undertaking of the Metal Corporation, wrongfully withholds such property from the Central Government or Government company; or

(b) wrongfully obtains possession of, or retains, any property forming part of the undertaking of the Metal Corporation or wilfully withholds or fails to furnish to the Central Government or the Government company or any person or body of persons specified by that Government or Government company, any document relating to such undertaking which may be in his possession, custody or control or fails to deliver to the Central Government or the Government company or any person or body of persons specified by that Government or Government company, any assets, books of accounts, registers or other documents in his possession, custody or control, relating to the undertaking of the Metal Corporation, or

(c) wrongfully removes or destroys any property forming part of any undertaking of the Metal Corporation or prefers any claim under this Ordinance which he knows or has reasonable cause to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both,

Offences
by com-
panies.

21. (1) Where an offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals;

(b) “director”, in relation to a firm, means a partner in the firm.

Power
to make
rules.

22. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which the monies in any provident or other fund referred to in sub-section (2) of section 15 shall be dealt with;

(b) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of

no effect, as the case may be; so, however, that any modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

23. If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, not inconsistent with the provisions of this Ordinance, remove the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date of promulgation of this Ordinance.

36 of 1966. 24. (1) On the commencement of this Ordinance, the Tribunal constituted under sub-section (1) of section 11 of the Metal Corporation of India (Acquisition of Undertaking) Act, 1966, shall stand abolished and every proceeding pending before it, every order made by it and every appeal or application against any such order, shall stand abated.

Abolition of Tribunal etc.

(2) On the commencement of this Ordinance,—

(a) every suit, appeal or other proceeding of whatever nature in relation to the affairs or business of the undertaking of the Metal Corporation instituted before such commencement, and pending on such commencement shall not abate, be discontinued or be, in any way, prejudicially affected by reason of anything contained in this Ordinance, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Metal Corporation and not against the Central Government or the Government company;

(b) every suit, appeal or other proceeding of whatever nature instituted after such commencement but before the appointed day, in relation to the affairs or business of the undertaking of the Metal Corporation, and pending on the appointed day, shall not abate, be discontinued or, in any way, be prejudicially affected by reason of anything contained in this Ordinance, but such suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the Government company.

(3) Anything done, any action taken or any contract entered into by the Central Government, Administrator or the Government company at any time during the period commencing on the date of commencement of this Ordinance and ending on the appointed day shall be deemed to have been done, taken or entered into by the Central Government or, as the case may be, the Government company in the due course of management of the undertaking of the Metal Corporation.

FAKHRUDDIN ALI AHMED,
President.

K. K. SUNDARAM,
Secy. to the Govt. of India.

